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billed directly for utilities and the utility allowance exceeds the net tenant contribution to rent. Such utility payments to tenants must be made on a monthly basis.

(e) *Administrative errors.* Borrowers are responsible for correcting borrower errors made in regard to RA requests for payments. In accordance with subpart O of this part, borrowers will be required to repay the Agency for any unauthorized RA received or any unauthorized use of RA except in certain cases of tenant error or fraud.

§ 3560.257 Assigning rental assistance.

(a) *Priorities for rental assistance.* (1) Borrowers must use the following priorities when assigning available rental assistance.

(i) First priority is to eligible very low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(ii) Second priority, if the housing project has vacant rental units, is to eligible very low-income applicants on the waiting list.

(iii) Third priority is to eligible low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(iv) Fourth priority, if the housing project has vacant rental units, is to eligible low-income applicants on the waiting list.

(v) Fifth priority is to households which are residing in a rental unit for which they do not qualify on the basis of an occupancy waiver or other special approval situations.

(2) In order to provide rental assistance to the third, fourth, and fifth priority categories, a borrower must fully document either that there are no very low-income households on the housing project's waiting list or that occupancy by low-income households is limited as follows:

(i) For housing occupied on or after November 30, 1983, no more than 5 percent of the units in the housing are occupied by low-income households; or

(ii) For housing occupied before November 30, 1983, no more than 25 percent of the units in the housing are occupied by low-income households.

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(b) *Continued eligibility.* Tenants receiving rental assistance may continue to do so as long as they remain eligible for occupancy and for rental assistance under § 3560.254(c), and as long as rental assistance units are available.

(c) *Assignment of rental assistance.* Except as provided in § 3560.454(c) and using the priorities given in paragraph (a) of this section, borrowers must assign available rental assistance units as soon as rental assistance units become available.

(1) When a rental assistance unit is assigned to an eligible existing tenant on a day other than the first day of a month, the Agency will not provide the borrower rental assistance for the newly assigned existing tenant and the tenant will not pay reduced rental charges until the first of the month following the assignment of the rental assistance.

(2) When an eligible applicant moves into a rental assistance unit on a day other than the first day of a month, they will pay a prorated rent based on the number of days they occupy the rental assistance unit and the amount of rental assistance they will be receiving.

(d) *Incorrectly assigned rental assistance.* Incorrectly assigned rental assistance is viewed as unauthorized assistance and handled in accordance with subpart O of this part.

§ 3560.258 Terms of agreement.

(a) *Term of agreement.* Rental assistance agreements will be consistent with available funding. Rental assistance agreements expire when the funds obligated for rental assistance units are fully disbursed in accordance with the conditions of the agreement.

(b) *Replacing expiring obligations.* To the extent funds are available for replacement units, the Agency will renew rental assistance agreements.

§ 3560.259 Transferring rental assistance.

(a) *Agency authority.* The Agency may transfer rental assistance in the following instances:

(1) To accompany the transfer of a housing project to a different borrower;

(2) After a voluntary conveyance or a foreclosure sale;

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- (3) After a liquidation or prepayment;
- (4) To the extent permitted by law, when any rental assistance units have not been used for a 6-month period; or
- (5) When the loan cannot be closed.

(b) *Agency review before transferring rental assistance.* The Agency must perform a review to determine if all eligible tenants in the project are receiving rental assistance before the Agency transfers it to another project.

(c) *Transferring rental assistance for displaced tenants.* The Agency may transfer rental assistance from one housing project to another eligible housing project for a tenant who is moving due to displacement as a result of prepayment, liquidation, or a natural disaster. The tenant must begin using the rental assistance within 4 months of the transfer or the RA will become available for use by the next rental assistance eligible tenant in the housing project.

§ 3560.260 Rental subsidies from non-Agency sources.

(a) *General.* The Agency may authorize the use of rental subsidies from sources other than the Agency in Agency financed housing projects. The Agency will make no commitment to providing Agency rental assistance at the expiration of the rental subsidies from other sources.

(b) *HUD vouchers.* For tenants with HUD vouchers, the borrower must set the rental unit rent at the basic rent or the rent standard set by the public housing authority, whichever is less. The public housing authority distributing the HUD vouchers may set the utility allowance.

(c) *Loan proposals using non-Agency rental subsidy.* Loan applicants or borrowers proposing to use rental subsidy from sources other than the Agency must provide:

(1) Documentation demonstrating that a market exists for households eligible for the subsidy and the households are at income levels that would benefit from the amount of rental subsidy that will be provided;

(2) A plan describing actions to be taken when the rental subsidy expires to minimize the impact on tenants losing the rental assistance and to avoid displacement; and

(3) A copy of the project-based rental assistance agreement to be signed by the borrower and the provider of the rental assistance.

(d) *Rental subsidy agreement.* The borrower and the provider of rental subsidies from sources other than the Agency must execute a rental subsidy agreement and submit a copy of the agreement to the Agency. At a minimum, the rental subsidy agreement between the borrower and the source of the rental subsidy must include the following provisions:

(1) A description of how the subsidy will be paid. The rental subsidy payments may be paid directly to the tenants, to the borrower on behalf of the tenants, or deposited to a separate account established for the subsidy. The tenants must be advised of the amount and source of the subsidy through the lease or a supplement to the lease.

(2) The life of a project-based rental subsidy agreement with a non-Agency source must be similar to existing or current Agency rental assistance funding levels and sufficient funds must be set aside to assure availability of the rental subsidy for this term. The method of supplying the funds must be clearly established.

§ 3560.261 Improperly advanced rental assistance.

Improperly advanced RHS rental assistance resulting from tenant or borrower error or fraud constitutes unauthorized assistance and the provisions of subpart O of this part apply.

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§ 3560.300 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required